

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

In the Matter of Application Serial No. 76/423,256
filed June 20, 2002 for the mark KISS MY LIPS
Published in the Official Gazette of May 20, 2003



07-21-2003

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

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BARI COSMETICS, LTD., :

Opposer, :

v. : Opposition No.

CABOODLES COSMETICS L.P., :

Applicant. :

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OPPOSITION

BARI COSMETICS, LTD., a corporation organized and existing under the laws of the State of Delaware, located and doing business at P.O. Box 958, Vailsgate, New York 12584, believes that it will be damaged by registration of the mark shown in the above-mentioned application serial No. 76/423,256 and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer Bari Cosmetics, Ltd. has for many years been engaged in the manufacture, distribution and sale of cosmetics and beauty care products.

2. Since long prior to filing date of application serial No. 76/423,256, opposer adopted, commenced to use and has continuously used the trademarks LOVE MY LIPS, LOVE MY EYES, LOVE MY NAILS and LOVE MY FACE in interstate commerce. Upon information and belief,

marks including the prefix "LOVE MY" have come to identify a single source of the goods to which said marks have been applied, that source being opposer, and opposer's aforesaid marks have come to function as a guarantee of the quality of the goods to which they are applied.

3. The marks LOVE MY LIPS, LOVE MY EYES, LOVE MY NAILS and LOVE MY FACE have been applied to opposer's goods by means of labels affixed to the products and/or containers therefor. Said trademarks have also been employed in advertising, offering for sale and sale of said products. The products so marked have been widely distributed and used throughout the United States so that the trademarks have great value to opposer and identify said products upon which and in connection with which they are used as coming from opposer and opposer only.

4. Opposer's aforesaid trademarks have been registered in the United States Patent and Trademark Office as follows:

Reg. No. 1,274,721 - LOVE MY NAILS
Reg. No. 1,287,561 - LOVE MY LIPS
Reg. No. 1,287,560 - LOVE MY EYES
Reg. No. 1,656,563 - LOVE MY FACE

Said registrations are valid, subsisting, incontestable and in full force and effect, and copies thereof are attached hereto as Exhibits A, B, C and D. Opposer hereby gives notice, in accordance with Trademark Rule 2.122(b), that it will rely thereon as evidence on its behalf in this proceeding, and status copies showing present title will be introduced into evidence during its testimony period.

5. The goods to which applicant intends to apply the mark KISS MY LIPS and those to which opposer applies its mark LOVE MY LIPS are identical. Upon information and belief, opposer's and applicant's goods are sold through the same business outlets and sold to and used by the same class of customers. Accordingly, it is likely that when applicant's mark is applied to its


goods, confusion or mistake among purchasers will be caused and such purchasers will be deceived into believing that applicant's goods emanate from opposer or are in some way approved by or associated with, opposer.

6. Because of the confusion, mistake or deception which is likely to result from the concurrent use by opposer of its trademarks, on the one hand, and applicant's mark, on the other hand, in connection with the parties' respective products which are sold to and used by the same class of consumers and, upon information and belief, sold through the same business outlets, opposer's business and reputation and its rights in its aforesaid trademarks will be impaired by registration of the mark published.

WHEREFORE, the opposer demands judgment sustaining this opposition and adjudging that the applicant is not entitled to the registration of the trademark for which it has made application serial No. 76/423,256.

Respectfully submitted,

KIRSCHSTEIN, KIRSCHSTEIN,
OTTINGER & ISRAEL, P.C.
Attorneys for Opposer
489 Fifth Avenue
New York, New York 10017-6105
(212) 697-3750

By 
DAVID B. KIRSCHSTEIN,
Reg. No. 17244

Dated: New York, New York
July 18, 2003

CERTIFICATE OF MAILING

I hereby certify that the foregoing Opposition is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box TTAB, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, this 18th day of July, 2003.



DAVID B. KIRSCHSTEIN

TTAB

KIRSCHSTEIN, OTTINGER, ISRAEL & SCHIFFMILLER, P.C.

ATTORNEYS AT LAW
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MORRIS KIRSCHSTEIN
(1918-1978)
BERTRAM OTTINGER
(1937-1986)

July 18, 2003



BOX TTAB

FEE

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

07-21-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Attention: Clerk

Re: Trademark: KISS MY LIPS
Ser. No.: 76-423,256
Published: May 20, 2003
Applicant: Caboodles Cosmetics L.P.
Class: 3

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FOR INFORMATION AND
RECORD ONLY

Dear Sir or Madam:

Enclosed herewith please find the original and two copies of an Opposition to registration of the above application filed on behalf of our client, Bari Cosmetics, Ltd. Also enclosed is our check in the amount of \$300 to cover the filing fee with respect thereto. Please file the same.

If any additional fees are required, it is respectfully requested that they be charged to the undersigned's Deposit Account, No. 11-1145.

Very truly yours,


DAVID B. KIRSCHSTEIN

DBK:dge
enclosures